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**TO:**

**FROM:**

**Name:** Office of Petitions

**Name:** Thomas H. Martin, Esq.

**Firm:** U.S. Patent & Trademark Office

**Phone No.:** 330-877-0700

**Fax No.:** 571-273-0025

**No. of Pages (including this):** 3

**Subject:** U.S. Patent Application No. 10/047,545

**Date:** July 8, 2008

Gary Karlin Michelson

Filed: January 16, 2002

THREADED FRUSTO-CONICAL INTERBODY

SPINAL FUSION IMPLANTS

Attorney Docket No. 101.0053-01000

Customer No. 22882

Confirmation No. 4993

**FAX RECEIVED**

JUL 10 2008

**Confirmation Copy to Follow: NO**

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**Message:**

**CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8**

I hereby certify that the attached Petition To Withdraw From Issue Under 37 C.F.R. § 1.313(a) (\$130 Petition fee is to be charged to Deposit Account No. 50-3726) is being facsimile transmitted to the U.S. Patent and Trademark Office on July 8, 2008.

  
Sandra L. Blackmon

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Additionally, MPEP § 804, page 800-17, indicates that when two applications are each subject to an ODP rejection, "the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer." Thereafter, according to MPEP § 804, page 800-17, "a terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue." Because the parent application was filed June 07, 1995, and the present application was filed January 01, 2002, Applicant submits that the parent application is the earlier filed application by more than six (6) years. Therefore, but for the proper applicability of an ODP rejection to the present application, Applicant submits that both the present and parent applications are in condition for allowance. Accordingly, Applicant requests that the Director facilitate issuance of a Notice of Allowance in the parent application. The parent application has been pending for more than 13 years, and is ripe for issuance of a Notice of Allowance.

The petition fee in the amount of \$130.00 (37 C.F.R. 1.17(h)) is submitted herewith. If there are any additional fees due in connection with the filing of this Petition, please charge the fee to our Deposit Account 50-3726.

Respectfully submitted,

MARTIN & FERRARO LLP

Date: July 8, 2008

By:

  
Thomas H. Martin  
Registration No. 34,383

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PATENT

Attorney Docket No. 101.0053-01000

Customer No. 22882

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: ) Confirmation No.: 4993  
Gary Karlin Michelson )  
Serial No: 10/047,545 ) Group Art Unit: 3772  
Filed: January 16, 2002 ) Examiner: Michael A. Brown  
For: THREADED FRUSTO-CONICAL )  
INTERBODY SPINAL FUSION )  
IMPLANTS )

FAX RECEIVED

Mail Stop PETITION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

JUL 10 2008

Dear Sir:

**PETITION TO WITHDRAW FROM ISSUE  
UNDER 37 C.F.R. § 1.313(a)**

After receipt of a Notice of Allowance dated June 25, 2008, but prior to the payment of the associated issue fee, Applicant requests that the present application be withdrawn from issue. Currently, the parent application, U.S. Serial No. 08/480,908, of the present application is pending, but subject to a "provisional" nonstatutory obviousness-type double patenting ("ODP") rejection based on claims of the present application. Applicant received the ODP rejection in the parent application subsequent to the Notice of Allowance in the present application in an Office Action dated June 27, 2008.<sup>1</sup> According to MPEP § 804 and Chart I-B included therein, an ODP rejection is properly applicable to each of the present and parent applications. Therefore, Applicant requests that the present application be withdrawn from issue, and properly subjected to an ODP rejection.

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<sup>1</sup> Note that a previous ODP rejection in the parent application similarly based on claims in the present application was overcome by cancelling the offending claims from the present application. However, after filing two status inquires on March 20 and June 09, 2008, and waiting six (6) months for prosecution to continue in the parent application, Applicant received yet another ODP rejection based on different claims in the present application.